

CHAPTER 11

CHILD/SPOUSE ABUSE AND THE LAUTENBURG AMENDMENT

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CHAPTER 11

CHILD/SPOUSE ABUSE AND THE LAUTENBURG AMENDMENT

I. INTRODUCTION

A. The problem-

1. A battering husband kills four women a day. One woman is battered every 15 seconds.
2. Link between child abuse and spouse abuse. The American Academy of Pediatrics estimates that between 30-59% of mothers of children reported for abuse are themselves battered.
3. The Clerk of Court, United States Army Court of Criminal Appeals, estimates the percentage of the general-courts martial containing at least one specification of child abuse has risen from 4.7% in 1988 to 14.4% in 1995 - fell to 9.3% in 1996. Rose to 10.5% in 1997. For the 5-year period from FY 98-FY03, 5.53% of all GCM convictions included at least one specification of domestic abuse.

B. Why a separate class? Unique Issues.

1. Family members.
2. Rank of Perpetrator.
3. Duty Performance.
4. Role of Medical Personnel.
5. Interface with Civilian Agencies.

II. ARMY POLICY

- A. AR 608-18, *The Army Family Advocacy Program*. It is DA policy to:

MAJ Chris Behan
FY 2004 Senior Officers Legal Orientation Course
FY 2004

1. Prevent spouse and child abuse.
2. Protect victims of abuse.
3. Ensure personnel who intervene are trained.
4. Identify abuse early and provide treatment for those affected.
5. Balance treatment concerns with your authority as a commander to take disciplinary or administrative action.

B. Responsibilities.

1. At DA level, the ACSIM has responsibility for the Family Advocacy Program.
2. The Commander, U.S. Army Community and Family Support Center develops policy and programs.
3. Unit Commanders:
 - a) Attend spouse and child abuse commander education programs designed for unit commanders.
 - b) Schedule time for soldiers to attend troop awareness briefings.
 - c) Report and investigate suspected abuse.
 - d) Attend Case Review Committee (CRC) presentations when unit soldiers involved.
 - e) Encourage soldiers to participate in Family Advocacy Programs.
 - f) Consider CRC recommendations before taking administrative or disciplinary action.
4. The Family Advocacy Program Manager (FAPM):
 - a) Works for Army Community Services (ACS).

- b) Runs Family Advocacy Program for the installation.
 - c) Acts as liaison between military and civilian agencies.
 - d) Serves as member of FAC.
5. The Family Advocacy Committee (FAC):
- a) is the multidisciplinary team that advises installation commander on FAP policy and procedure.
 - b) is chaired by the garrison or base support battalion commander or designee.
 - c) is composed of:
 - (1) Pediatrician or other MD.
 - (2) Community Health Nurse (ad hoc).
 - (3) DENTAC representative.
 - (4) Provost Marshall representative.
 - (5) CID representative.
 - (6) SJA representative.
 - (7) ADAPCP clinical director.
 - (8) Child Development Services representative.
 - (9) Schools representative.
 - (10) Installation Chaplain or representative.
 - (11) Command Sergeant Major.
 - (12) Child Protective Service representative.
 - d) Meets at least quarterly.

- e) Identifies trends requiring a command or community response, coordinates civilian and military resources, facilitates an integrated community approach to the prevention of child and spouse abuse, develops community, command and troop education prevention programs, publicizes how to report abuse, addresses administrative details.

6. Case Review Committee (CRC):

- a) Is a multidisciplinary team falling under medical treatment facility (MTF).
- b) chaired by the Chief, Social Work Services.
- c) tracks and evaluates cases of reported abuse.
 - (1) cases are either substantiated or unsubstantiated.
 - (2) the standard is fairly low: a preponderance of the evidence.
 - (3) a majority of members must vote to substantiate.
- d) meets monthly; each case is reviewed at least quarterly.
- e) determines whether civilian courts should intervene.
- f) determines whether to recommend removal of children from home.
- g) recommends corrective measures.
- h) briefs the commander on status of case.
- i) recommendations, such as treatment, foster care, etc., do not preclude criminal or adverse administrative action against a soldier.

C. Reporting Requirements.

- 1. Report Point of Contact (RPOC). Para. 3-6.

- a) Designated by installation commander as a central POC.
 - b) Normally the MTF emergency room or MP Desk.
 - c) Manned 24 hours.
2. Who must report suspected abuse?
- a) All soldiers, civilian employees and members of military community **should be encouraged** to report.
 - b) Law enforcement, medical, social work and school personnel **will** report.
 - c) Commanders **should** report.
3. When a family member reports abuse, the commander will be notified within 24 hours.
- D. Removal of Children From Home.
1. Medical Protective Custody. If the child is properly at the MTF, child may be taken into medical protective custody as follows:
- a) Obtain parental consent, if possible.
 - b) If consent is not given, ask whether the child suffers from abuse or neglect by a parent to the extent that immediate removal from the home is necessary to avoid imminent danger to the child's life or health.
 - c) The treating physician makes the initial determination.
 - d) Approved by MTF commander.
 - e) Unit commander will be notified.
2. Children cannot be removed from a home, school or child care facility unless a bona fide medical emergency exists. Coordination with civilian authorities may be appropriate.

3. Foster Care.
 - a) Generally, need parental consent or order from state or foreign court with jurisdiction.
 - (1) U.S. - seek court order even if parental consent is given.
 - (2) Foreign Country - Coordinate with host nation authorities.
 - b) Emergency situations. May be authorized if abuse is substantiated and child at risk of death or physical injury.

E. Records of Reported Abuse: Chapter 5.

1. are filed with the Army Central Registry, Fort Sam Houston.
2. must be substantiated spouse and child abuse.
 - a) The standard used by the Case Review Committee – a preponderance of the evidence available indicates abuse occurred.
 - b) Distinguish the standard used by CID in titling decisions: credible information exists that a crime was committed and this person did it.
3. a commander's access governed by FOIA and Privacy Act.

III. INVESTIGATION AND COMMANDER'S OPTIONS

- A. Law enforcement officials will take the lead.
 1. Military police: any offense punishable by one year or less.
 2. CID: all other offenses.
 3. CID will handle almost all offenses involving child sexual abuse, often in conjunction with civilian law enforcement agencies.
- B. Self-incrimination.

1. Interrogation of suspect.
 - a) Preference for law enforcement.
 - b) If a commander questions the soldier, read Article 31/Miranda rights. See rights Warning Card (GTA 19-6-6).
 - c) Social Workers or Medical Personnel. Once a soldier is identified as suspect, questioning should stop and law enforcement notified.
 - d) Therapist-patient privilege in the military? Unclear in light of recent case law. The Joint Service Committee on Military Justice has recommended the President approve a privilege prohibiting the government and defense from using statements made by service members and civilians to psychiatrists, psychotherapists and licensed social workers. However, while there may eventually be a rule prohibiting use of these communications in a court-martial, unresolved is whether health care providers can still be compelled to disclose to the chain of command communications made by soldiers to insure the health and welfare of other soldiers in the command..
2. Immunity. Can only be granted by the GCMCA.

C. Commander's options.

1. Actions under UCMJ.
 - a) Court-Martial.
 - b) Nonjudicial Punishment.
2. Adverse Administrative Actions.
 - a) Counseling, Reprimand.
 - b) Bar to Reenlistment.
 - c) Administrative Separation.
3. Ancillary actions.

- a) Termination of quarters/move soldier into the barracks.
 - b) Early return of dependents if overseas.
 - c) Curtailment of soldier's tour.
 - d) Bar to the installation.
 - e) Refer soldier to Community Mental Health.
4. Considerations.
- a) Must consider recommendation of the CRC.
 - b) This is only one of many factors. Also consider the need to maintain discipline, victim's needs, and the interests of justice.
 - c) Effect on victims. Will terminating quarters result in their unavailability for testimony?
 - (1) Subpoena power does not exist outside U.S.
 - (2) Foreign nationals may not be compelled to testify in U.S. courts. SOFA may require host nation to issue subpoena.
 - d) Statute of Limitations. Normally 5 years. Article 43, UCMJ.
5. Dealing with family members.
- a) Chain of Command concern v. disciplinary role.
 - b) Emotional issue.
 - c) Don't discuss legal rules (use of statements, etc.)
 - d) Concerns with finances, disruption of family, may lead to recanting or altering of testimony.
 - e) Victim - Witness Assistance. AR 27-10, chapter 18.

- (1) Victims and witnesses are to be treated with dignity and courtesy.
- (2) Victims should be kept informed of court proceedings and consulted about pretrial agreement negotiations and decisions not to prefer charges.
- (3) Staff Judge Advocate is responsible for the installation Victim - Witness Program.

IV. THE COURT-MARTIAL PROCESS

A. Typical Charges.

1. Rape and Carnal Knowledge (Article 120) (viability of mistake of fact defense in carnal knowledge cases).
2. Sodomy (Article 125).
3. Indecent Acts or liberties with a Child (Article 134).
4. Indecent Exposure (Article 134).
5. Indecent Language (Article 134).

B. Article 32, UCMJ Investigation.

1. Careful selection of investigating officer. Pick officer you could least afford to lose.
2. Witnesses.
 - a) No subpoena power over civilians.
 - b) Investigating officer decides if witness is reasonably available. R.C.M. 405(g)(2). If travel is required, IO coordinates with OSJA. Travel funded by GCMCA.
 - c) Authorizing delays.

C. Production of Witnesses at Trial.

1. The SJA office is responsible for securing witnesses for both the prosecution and defense.
2. Subpoena Power. A court-martial has the power to subpoena civilian witnesses (military witnesses are not subpoenaed, they are ordered to court).
 - a) Extends only to territorial limits of U.S. No U.S. subpoena power exists overseas.
 - (1) Court-martial overseas: SOFA may address host nation subpoena.
 - (2) Court-martial in U.S. but civilian witness outside U.S.: cannot be compelled to testify.
 - b) Witness who fails to respond to a subpoena may be punished in federal district court under Article 47, UCMJ. Subject to confinement and/or fine. As a practical matter, not often used.

V. LAUTENBURG AMENDMENT

A. References.

1. Gun Control Act of 1968, 18 U.S.C. § 921-928 (Supp. 1997).
2. The “Lautenberg Amendment” to the Brady Handgun Violence Prevention Act, P.L. 104-208, Title VI, section 658, 110 Stat. 3009.371; codified at 18 U.S.C. § 922(d)(9), § 922(g)(9); § 925(a)(1); (effective 30 Sept. 1996).
3. Department of Defense Implementation:
 - a) Memorandum, Assistant Secretary of Defense, Force Management Policy, Subject: Interim DoD Policy on Domestic Violence Amendment to the Gun Control Act (22 Oct 1997).
 - b) Message, 151100Z Jan 98, Headquarters, Dep’t of Army, DAPE-MPE, subject: HQDA Message on Interim

Implementation of Lautenburg Amendment (15 Jan. 1998).
Copy at Appendix 1.

- c) Message, 311108Z Oct 97, Headquarters, Dep't of Army, DAJA-LA, subject: Interim Guidance on Lautenburg Amendment Issues (31 Oct. 1997).
- d) Message, 211105Z May 99, Headquarters, Dep't of Army, DAPE-MPE, subject: HQDA Guidance on Deployment Eligibility, Assignment, and Reporting of Soldiers Affected by the Lautenburg Amendment. Copy at Appendix 2.
- e) Memorandum, Under Secretary of Defense for Personnel and Readiness, Subject: Department of Defense Policy for Implementation of Domestic Violence Misdemeanor Amendment to the Gun Control Act for Military Personnel (27 Nov. 2002). Copy at Appendix 3.

- 4. JAGNet site for Lautenberg Amendment database:
<http://www.jagnet.army.mil/jagnet/lautenasgm.nsf/?Open>

B. Basic Provisions.

- 1. 18 U.S.C. § 922(d) prohibits the transfer of “any firearm or ammunition to any person whom you know or have reasonable cause to believe . . . has been convicted in any court of a misdemeanor crime of domestic violence.”
- 2. 18 U.S.C. § 922(g) prohibits “any person . . . who has been convicted in any court of a misdemeanor crime of domestic violence . . . to receive any firearm or ammunition which has been shipped in interstate or foreign commerce.”
- 3. Violations of either prohibition are punishable by 10 years confinement, \$250, 000 fine, or both. 18 U.S.C. § 924(a)(2).
- 4. 18 U.S.C. § 925 formerly exempted “any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof.” This “federal exemption” has been eliminated for individuals “convicted in any court of a misdemeanor crime of domestic violence.”

- C. Elements of a “Misdemeanor Crime of Domestic Violence,” 18 U.S.C. § 921(a)(33).
1. The person was convicted of a crime classified as a misdemeanor in the jurisdiction where the conviction was entered.
 2. The offense had as an element the use or attempted use of physical force, or threatened use of a deadly weapon.
 3. The offender was at the time of the offense:
 - a) A current or former spouse, parent or guardian of the victim;
 - (1) A person with whom the victim shared a child in common;
 - (2) A person who was cohabiting with or has cohabited with the victim as a spouse, parent or guardian of the victim;
 - (3) A person who was similarly situated to a spouse, parent, or guardian of victim.
 4. The convicted offender was represented by counsel, or knowingly and intelligently waived the right to counsel.
 5. If entitled to have the case tried by jury, the case was actually tried by a jury or the person knowingly and intelligently waived the right to have the case tried by a jury.
 6. The conviction has not been expunged or set aside, or the convicted offender has not been pardoned for the offense or had civil rights restored, unless the pardon, expungement, or restoration of civil rights provides that the offender may not ship, transport, possess, or receive firearms.
- D. Dep’t of Defense and Dep’t of Army Response.
1. Interpretation.
 - a) Conviction of a misdemeanor crime of domestic violence does not include a summary court-martial conviction or nonjudicial punishment under Article 15.

- b) The law does not apply to crew served weapons or major weapons systems (tanks, missiles, aircraft, etc.).
 - c) The law applies to all other Army issue and privately owned firearms and ammunition.
 - d) The Army policy applies worldwide (including hostile fire areas).
 - e) Pursuant to the 27 November 2002 DoD Policy Memorandum, felony crimes of domestic violence are now considered qualifying convictions for Lautenberg Amendment purposes.
2. Commander Responsibilities Under January 1998 Interim Guidance.
- a) Notify all soldiers that it is unlawful to possess firearms and ammunition if they have a conviction of a misdemeanor crime of domestic violence.
 - b) Conduct local file checks to identify soldiers who may have disqualifying convictions.
 - c) Establish procedures to ensure compliance, to include withdrawing privately owned weapons from unit arms rooms. Such procedures should permit soldiers to sell or transfer personal firearms to authorized individuals.
 - d) Soldiers who have or may have a qualifying conviction should be referred to a legal assistance attorney.
 - e) Reassign to duties that do not require possession of firearms or ammunition.
 - f) May initiate adverse administrative action against soldiers solely on the basis of inability to possess a weapon only if the conviction was entered after 30 September 1996 and the soldier has been given a reasonable amount of time to obtain a pardon or other relief.
 - g) May initiate adverse action on the basis of the underlying misconduct or for civil conviction regardless of when the misconduct or conviction occurred.

3. Commander Responsibilities Under May 1999 Message
 - a) Soldiers with disqualifying conviction or *reasonable cause to believe* have a disqualifying conviction are non-deployable or assignable for:
 - (1) Mission requiring Firearms (No Curtailment)
 - (2) Overseas assignments (No Curtailment)
 - (3) TOE/MTOE Units (New Soldiers Only)
 - (4) Service Schools
 - (5) Limited Leadership
 - b) Enlisted Retention
 - (1) Extension for one year only (does not apply to bared soldiers).
 - (2) No reenlistment.
 - (3) Accept voluntary separation under Chapter 5-3.
 - c) Reporting:
 - (1) USR Code (other) beginning 15 July.
 - (2) Central reporting, wait.
 - d) National Guard and Reserves report Semi-annually starting 1 Aug. 1999.
4. Military Department Policies Under November 2002 DoD Policy Memorandum:
 - a) Each Department shall implement a periodic training program to inform personnel of the Lautenberg Amendment and DoD policy related thereto.

- (1) Training shall inform personnel of their affirmative and continuing obligation to inform commanders or supervisors of qualifying convictions.
 - (2) DoD components will also post notices about the Amendment and DoD policy in all facilities in which Government firearms or ammunition are stored.
- b) Departments may require personnel to certify whether they have qualifying convictions.
- (1) If so, Departments shall use DD Form 2760 for such certifications.
 - (2) If not, DD Form 2760 shall be made available for personnel who self-report.
 - (3) Departments will issue regulations governing the filing, maintenance and retrieval of DD Form 2760.
- c) Departments may promulgate separation regulations specifically pertaining to members who have qualifying convictions.
- d) NOTE: As of 25 September 2003, neither DoD nor DA have provided instructions or regulations implementing the provisions of the 27 November 2002 DoD policy memorandum.
5. Legal Assistance.
- a) Personnel who believe they may have a disqualifying conviction will be referred to legal assistance. Legal assistance attorneys will explain the law and potential criminal and administrative consequences of a disqualifying conviction.
 - b) LA attorneys will assist soldiers, to the extent possible, in obtaining pardons, expungement of records, proof of deferred adjudication, or restoration of civil rights, which would render Lautenberg inapplicable to the client.

- c) The scope of legal assistance involving civilian criminal matters is limited by AR 27-3, &3-6j, and clients may need referral to civilian defense counsel.
- d) Clients needing advice on criminal law or administrative separation matters should be referred to TDS, IAW AR 27-3, &3-6g(5) & 3-8a(1).

E. Current Issues.

- 1. Litigation. *Fraternal Order of Police v. United States*, 152 F.3d 998 (D.C. Cir. 1998) *reh'g granted*, 159 F.3d 1362, *reversed*, 173 F.3d 898 (D.C. Cir. 1999). On 28 August 1998 the court held that 18 U.S.C. §925 violates the Equal Protection Clause, because there is no rational basis for prohibiting possession of firearms by officers with misdemeanor domestic violence convictions, while permitting possession by officers with domestic violence felony convictions. On 16 April 1999 the court reversed itself and held that the amendment does not violate the Equal Protection Clause.

F. The Current Policy Debate.

- 1. Rescind overseas applicability (absent definitive judicial ruling).
- 2. Provide guidance on foreign convictions.
- 3. Require certification only for personnel with unsupervised access to weapons and ammunition.
- 4. Ensure consistent application for military, civilian and contract personnel.
- 5. Oppose creation of non-weapons-bearing MOSs.

VI. CONCLUSION.

SUBJECT: HQDA GUIDANCE ON DEPLOYMENT ELIGIBILITY,. ASSIGNMENT,
AND REPORTING OF SOLDIERS AFFECTED BY THE LAUTENBERG AMENDMENT

A. REFERENCE HQDA MESSAGE 151100Z JAN 98, SUBJECT: HQDA MESSAGE ON
INTERIM IMPLEMENTATION OF THE LAUTENBERG AMENDMENT.

1. THE LAUTENBERG AMENDMENT BECAME LAW 30 SEP 1996. THIS
AMENDMENT
MADE IT A FELONY FOR ANY PERSON WHO HAS BEEN CONVICTED OF A
MISDEMEANOR CRIME OF DOMESTIC VIOLENCE TO SHIP, TRANSPORT,
POSSESS OR RECEIVE FIREARMS OR AMMUNITION. THE TRANSFER, ISSUANCE
OR SALE OF
FIREARMS TO A PERSON WITH SUCH A CONVICTION IS ALSO A FELONY.

2. THIS MESSAGE SUPPLEMENTS AND DOES NOT SUPERSEDE HQDA MESSAGE
IN
REFERENCE A ABOVE. COMMANDERS WILL FOLLOW THE GUIDANCE
CONTAINED
IN THAT MESSAGE FOR SOLDIERS ALREADY DEPLOYED. COMMANDERS WILL
DETAIL THOSE WHOM THEY KNOW OR HAVE REASONABLE CAUSE TO
BELIEVE
HAVE A CONVICTION FOR A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE
TO
DUTIES THAT DO NOT REQUIRE THE BEARING OF WEAPONS OR AMMUNITION
UNTIL THEY CAN DETERMINE WHETHER A QUALIFYING CONVICTION EXISTS.

A. DEPLOYMENT GUIDANCE: EFFECTIVE IMMEDIATELY, ALL SOLDIERS
KNOWN TO HAVE, OR SOLDIERS WHOM COMMANDERS HAVE REASONABLE
CAUSE TO BELIEVE HAVE, A CONVICTION OF A MISDEMEANOR CRIME OF
DOMESTIC VIOLENCE ARE NON-DEPLOYABLE FOR MISSIONS THAT REQUIRE
POSSESSION OF FIREARMS OR AMMUNITION.

B. ASSIGNMENT POLICY

(1) SOLDIERS AFFECTED BY THE LAUTENBERG AMENDMENT
ARE NOT ELIGIBLE FOR OVERSEAS ASSIGNMENT. ALL ACTIVE ARMY
SOLDIERS, INCLUDING RESERVE SOLDIERS ON EXTENDED ACTIVE DUTY,
WITH QUALIFYING CONVICTIONS (I.E., CONVICTIONS OF MISDEMEANOR
CRIMES OF DOMESTIC VIOLENCE) OR THOSE ACTIVE ARMY SOLDIERS WHOM
COMMANDERS HAVE REASONABLE CAUSE TO BELIEVE HAVE QUALIFYING
CONVICTIONS ON HQDA-ISSUED OCONUS ASSIGNMENT INSTRUCTIONS WILL
BE REPORTED IMMEDIATELY BY FAX TO CDR PERSCOM (TAPC-EPC-O) FOR
ENLISTED AND (TAPC-OPD-M) FOR OFFICERS FOR TOP OF THE SYSTEM
DELETION. THE FAX NUMBER FOR ENLISTED SOLDIERS IS DSN 221-6636,

COMMERCIAL (703) 325-6636 AND FAX NUMBER DSN 221-7254, COMMERCIAL (703)325-7254 FOR OFFICERS. SOLDIERS WHO HAVE ALREADY EXERCISED ANY PORTION OF THEIR PCS ENTITLEMENTS WILL COMPLY WITH THEIR OVERSEAS ASSIGNMENT.

(2) OCONUS BASED ACTIVE ARMY AND ACTIVE GUARD RESERVE (AGR) SOLDIERS AFFECTED BY THE LAUTENBERG AMENDMENT WILL COMPLETE THEIR PRESCRIBED TOURS. ALL OCONUS-BASED ACTIVE ARMY SOLDIERS, (INCLUDING RESERVE SOLDIERS ON EXTENDED ACTIVE DUTY) AND AGR SOLDIERS WITH HQDA-ISSUED ASSIGNMENT INSTRUCTIONS WILL CONTINUE TO COMPLY WITH THEIR ASSIGNMENT INSTRUCTIONS. SOLDIERS WILL NOT BE CURTAILED FROM THEIR OCONUS COMMANDS; THEY WILL DEPART ON THEIR ESTABLISHED DEROS. COMMANDERS MAY SUBMIT REQUESTS TO EXTEND SOLDIERS ON A CASE BY CASE BASIS. FOR PURPOSES OF THIS MESSAGE, OCONUS DOES NOT INCLUDE ALASKA, HAWAII, AND PUERTO RICO.

(3) COMMANDERS WILL ENSURE NEWLY ARRIVED OR ASSIGNED ACTIVE ARMY AND RESERVE COMPONENT SOLDIERS WITH QUALIFYING CONVICTIONS (I.E., CONVICTIONS OF MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE) OR THOSE SOLDIERS WHOM COMMANDERS HAVE REASONABLE CAUSE TO BELIEVE HAVE QUALIFYING CONVICTIONS ARE NOT ASSIGNED/ ATTACHED TO ANY TABLE OF ORGANIZATION EQUIPMENT (TOE) OR MODIFIED TABLE OF ORGANIZATION EQUIPMENT (MTOE) UNITS. COMMANDERS MAY REASSIGN/REATTACH CURRENTLY ASSIGNED/ATTACHED AFFECTED ACTIVE ARMY AND RESERVE COMPONENT SOLDIERS TO TABLE OF DISTRIBUTION AND ALLOWANCES (TDA) UNITS IF AVAILABLE ON THEIR INSTALLATIONS TO POSITIONS THAT DENY THEM ACCESS TO WEAPONS AND AMMUNITION. COMMANDERS WILL ALSO DENY THOSE SOLDIERS APPOINTMENT TO LEADERSHIP, SUPERVISORY OR PROPERTY ACCOUNTABILITY POSITIONS THAT BY NATURE OF THEIR EXECUTION OF MILITARY AUTHORITY/RESPONSIBILITY WOULD GIVE THEM ACCESS TO ARMS OR AMMUNITION.

(4) SOLDIERS WITH QUALIFYING CONVICTIONS (I.E., CONVICTIONS OF MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE) OR THOSE SOLDIERS WHOM COMMANDERS HAVE REASONABLE CAUSE TO BELIEVE HAVE QUALIFYING CONVICTIONS ARE NOT AUTHORIZED TO ATTEND ANY SERVICE SCHOOL WHERE INSTRUCTION WITH INDIVIDUAL WEAPONS OR AMMUNITION IS PART OF THE CURRICULUM. COMMANDERS WILL COUNSEL SOLDIERS THAT THE INABILITY TO COMPLETE SERVICE SCHOOLS MAY IMPACT ON FUTURE PROMOTION AND AFFECT THEIR CAREER LENGTH.

C. ENLISTED RETENTION: SOLDIERS KNOWN TO HAVE, OR THOSE

SOLDIERS WHOM COMMANDERS HAVE REASONABLE CAUSE TO BELIEVE HAVE, A CONVICTION OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE MAY EXTEND IF OTHERWISE QUALIFIED; HOWEVER, THEY ARE LIMITED TO A ONE YEAR EXTENSION. THESE SOLDIERS MAY NOT REENLIST AND ARE INELIGIBLE FOR THE INDEFINITE REENLISTMENT PROGRAM. THIS PARAGRAPH DOES NOT AUTHORIZE THE EXTENSION OF SOLDIERS BARRED FROM REENLISTMENT BASED ON AN INABILITY TO POSSESS A FIREARM OR AMMUNITION DUE TO CONVICTION OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE BASED ON AN ACT OF DOMESTIC VIOLENCE OCCURRING AFTER 30 SEP 1996 WHERE THE SOLDIER HAS BEEN GIVEN A REASONABLE TIME TO SEEK EXPUNCTION OF THE CONVICTION OR PARDON. AFFECTED SOLDIERS WHO HAVE REENLISTED FOR OPTIONS THAT REQUIRE A CONUS-BASED PCS WILL PROCEED TO THEIR NEW DUTY ASSIGNMENT. AFFECTED OCONUS SOLDIERS MAY RECEIVE NEW ASSIGNMENT INSTRUCTIONS FROM PERSCOM. AFFECTED SOLDIERS WHO HAVE REENLISTED FOR RETRAINING IN AN MOS WHERE INSTRUCTION INCLUDES WEAPONS OR AMMUNITION TRAINING WILL BE DELETED FROM ASSIGNMENT INSTRUCTIONS. ENLISTED SOLDIERS IMPACTED BY THIS CHANGE MAY SUBMIT A DA FORM 4187 THROUGH CHANNELS TO VOLUNTARILY SEPARATE UNDER THE PROVISIONS OF AR 635-200 PARAGRAPH 5-3 SECRETARIAL AUTHORITY. THIS RETENTION POLICY IS SUBJECT TO THE "SANCTUARY PROVISIONS" OF 10 U.S.C. 1176 (SOLDIERS WITHIN TWO YEARS OF RETIREMENT ELIGIBILITY).

D. OFFICER RETENTION: THE SAME STANDARDS OF EFFICIENCY AND CONDUCT ARE APPLICABLE TO OFFICERS REGARDLESS OF COMPONENT. OFFICERS MAY REQUEST RELEASE FROM ACTIVE DUTY OR SUBMIT UNQUALIFIED RESIGNATION UNDER AR 600-8-24, CHAPTERS 2 (SECTION II) OR 3 (SECTION II), RESPECTIVELY.

3. REPORTING REQUIREMENTS:

A. PERSCOM WILL PROVIDE ADDITIONAL GUIDANCE UNDER SEPARATE COVER ON RECURRING REPORTING FOR THE ACTIVE COMPONENT.

B. SEMI-ANNUALLY. THE ARMY NATIONAL GUARD DIRECTORATE (NG-ARZ-HRP) AND HEADQUARTERS OCAR (DAAR-PE) WILL SUBMIT E-MAIL REPORTS OF THE NUMBER OF SOLDIERS CONVICTED OF MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE AND NUMBER OF SOLDIERS WHO THEY HAVE REASON TO BELIEVE HAVE SUCH CONVICTIONS BEGINNING 1 AUG 1999, TO HQDA ODCSPER AT: DAPE-MPE@HQDA.ARMY.MIL.

C. UNIT STATUS REPORTING. COMMANDERS WILL ADD SOLDIERS IDENTIFIED AS NON DEPLOYABLE UNDER THIS POLICY TO USR REPORTING EFFECTIVE 15 JUL 1999. PERSONNEL IDENTIFIED WILL BE ADDED TO NON

DEPLOYABLE TOTAL UNDER THE CODE (OTHER) IAW AR 220-1, CHAPTER 4, PARAGRAPH 10, SUB PARAGRAPH E (PSPER NON-DEPLOYABLE REPORT). AN AMENDMENT TO TABLE D-1, AR 220-1, DATED 1 SEP 1997 WILL FOLLOW IN A SUBSEQUENT HQDA MESSAGE. DAMO-ODR POC: MAJ STEWART SMITH, DSN 227-9636.

4. NO ACTION OTHER THAN THAT SPECIFIED IN THIS MESSAGE IS REQUIRED PENDING FURTHER GUIDANCE FROM HQDA. POINTS OF CONTACT FOR HQDA ARE

MAJ CARR AT DSN 225-2457, COMMERCIAL (703) 695-2457 OR EMAIL (CARRDA@HQDA.ARMY.MIL) OR COL REDMANN AT DSN 227-7054, COMMERCIAL (703) 697-7054 OR EMAIL (REDMAJL@HQDA.ARMY.MIL).

FM DA WASHINGTON DC//DAPE-MPE//

TO ALARACT

UNCLAS

SUBJECT: HQDA MESSAGE ON INTERIM IMPLEMENTATION OF LAUTENBERG AMENDMENT

1. THIS MESSAGE PROVIDES HQDA INTERIM POLICY GUIDANCE FOR IMPLEMENTING THE LAUTENBERG AMENDMENT TO THE GUN CONTROL ACT OF 1968.
2. THE LAUTENBERG AMENDMENT BECAME LAW 30 SEPTEMBER 1996. THIS AMENDMENT MAKES IT A FELONY FOR ANY PERSON WHO HAS BEEN CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE TO SHIP, TRANSPORT, POSSESS OR RECEIVE FIREARMS OR AMMUNITION. CONVICTION OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE DOES NOT INCLUDE A SUMMARY COURT-MARTIAL CONVICTION OR IMPOSITION OF NONJUDICIAL PUNISHMENT (ARTICLE 15. UCMJ), OR DERERRED PROSECUTIONS (OR SIMILAR ALTERNATIVE DISPOSITIONS) IN A CIVILIAN COURT. TRANSFER OR SALE OF FIREARMS TO A PERSON WITH SUCH A CONVICTION IS ALSO A FELONY UNDER THE LAW.
3. THE FOLLOWING POLICY APPLIES TO ALL SOLDIERS THROUGHOUT THE WORLD INCLUDING HOSTILE FIRE AREAS AND APPLIES TO ALL ARMY ISSUE AND PRIVATELY OWNED FIREARMS AND AMMUNITION. IT DOES NOT APPLY TO MAJOR WEAPONS SYSTEMS OR CREW SERVED WEAPONS (TANKS, MISSILES, AIRCRAFT, ETC.). GUIDANCE FOR CIVILIAN EMPLOYEES WILL BE ISSUED SEPARATELY.
4. COMMANDERS MUST IMPLEMENT THE PROVISIONS IN THIS MESSAGE IMMEDIATELY. COMMANDERS WILL NOTIFY ALL SOLDIERS THAT IT IS UNLAWFUL TO POSSESS FIREARMS AND AMMUNITION IF THEY HAVE A CONVICTION OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE. COMMANDERS WILL CONDUCT LOCAL UNIT FILES CHECKS AND WILL REPORT THRU COMMAND CHANNELS TO HQDA (DAPE-MPE) SOLDIERS KNOWN TO HAVE QUALIFYING CONVICTIONS AND SOLDIERS REASONABLY BELIEVED TO HAVE SUCH CONVICTIONS. UPON RECEIPT OF THIS MESSAGE, MACOMS WILL NOTIFY HQDA (DAPE-MPE, MAJ DILLARD AT DSN 227-2403 (EMAIL DILLANL@HQDA.ARMY.MIL)) OF THEIR POC. HQDA WILL SEND REPORTING FORMAT AND MATRICES VIA EMAIL TO EACH MACOM POC FOR COMPILING DATA FOR FORWARDING TO HQDA. EACH MACOM

WILL FORWARD INITIAL DOMESTIC VIOLENCE CONVICTION INFORMATION ON ACTIVE DUTY SOLDIERS TO THIS HEADQUARTERS NO LATER THAN 27 FEBRUARY 1998. SOLDIERS WHO HAVE OR MAY HAVE A QUALIFYING CONVICTION SHOULD BE REFERRED TO A LEGAL ASSISTANCE ATTORNEY. FURTHER IMPLEMENTATION GUIDANCE WILL FOLLOW IN SUBSEQUENT MESSAGES.

5. COMMANDERS WILL DETAIL SOLDIERS WHO THEY HAVE REASON TO BELIEVE HAVE A CONVICTION FOR MISDEMEANOR CRIME OF DOMESTIC VIOLENCE TO DUTIES THAT DO NOT REQUIRE THE BEARING OF WEAPONS OR AMMUNITION. COMMANDERS MAY REASSIGN SOLDIERS TO LOCAL TDA UNITS WHERE APPROPRIATE. NO ADVERSE ACTION MAY BE TAKEN AGAINST SOLDIERS SOLELY ON THE BASIS OF AN INABILITY TO POSSESS A FIREARM OR AMMUNITION DUE TO CONVICTION OF A MISCEMEANOR CRIME OF DOMESTIC VIOLENCE IF THE ACT OF DOMESTIC VIOLENCE THAT LED TO THE CONVICTION OCCURRED ON OR BEFORE 30 SEPTEMBER 1996. COMMANDERS MAY INITIATE ADVERSE ACTION, INCLUDING BARS TO REENLISTMENT OR PROCESSING FOR ELIMINATION UNDER APPLICABLE REGULATIONS, AGAINST SOLDIERS BECAUSE OF AN INABILITY TO POSSESS A FIREARM OR AMMUNITION DUE TO CONVICTION OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE IF THE ACT OF DOMESTIC VIOLENCE, THAT LED TO THE CONVICTION OCCURRED AFTER 30 SEPTEMBER 1996, AND AFTER PROVIDING SUCH SOLDIERS A REASONABLE TIME TO SEEK EXPUNCTION OF THE CONVICTION OR PARDON. THIS POLICY CONCERNING ADVERSE ACTION IS NOT MEANT TO RESTRICT A COMMANDERS AUTHORITY TO INITIATE SEPARATION OF A SOLDIER BASED ON THE CONDUCT THAT LED TO THE QUALIFYING CONVICTION. OR FOR CIVIL CONVICTION UP AR 635-200. PARAGRAPH 14-5, REGARDLESS OF WHEN THE MISCONDUCT OR CONVICTION OCCURRED. LEGAL ASSISTANCE ATTORNEYS MAY ASSIST SOLDIERS IN SEEKING EXPUNCTION OR PARDON OF CONVICTIONS.

6. A PERSON HAS A CONVICTION OF A "MISDEMEANOR CRIME OF DOMESTIC VIOLENCE" IF: THE PERSON WAS CONVICTED OF A MISDEMEANOR CRIME, AND; THE OFFENSE HAD AS AN ELEMENT THE USE OR ATTEMPTED USE OF PHYSICAL FORCE, OR THREATENED USE OF A DEADLY WEAPON, AND; THE CONVICTED OFFENDER WAS AT THE TIME OF THE OFFENSE: A CURRENT OR FORMER SPOUSE, PARENT, OR GUARDIAN OF THE VICTIM OR: A PERSON WITH WHOM THE VICTIM SHARED A CHILD IN COMMON, OR; A PERSON WHO WAS COHABITING WITH OR HAS COHABITED WITH THE VICTIM AS A SPOUSE, PARENT OR GUARDIAN, OR; A PERSON WHO WAS SIMILARLY SITUATED TO A SPOUSE, PARENT, OR GUARDIAN OF THE VICTIM, AND; THE CONVICTED OFFENDER WAS REPRESENTED BY COUNSEL, OR KNOWINGLY AND INTELLIGENTLY WAIVED THE RIGHT TO COUNSEL, AND; IF ENTITLED TO HAVE THE CASE TRIED BY A JURY, THE CASE WAS ACTUALLY TRIED BY A JURY OR THE PERSON KNOWINGLY AND INTELLIGENTLY WAIVED THE RIGHT TO HAVE THE CASE TRIED BY A JURY,

AND; THE CONVICTION HAS NOT BEEN EXPUNGED OR SET ASIDE, OR THE CONVICTED OFFENDER HAS NOT BEEN PARDONED FOR THE OFFENSE OR HAD CIVIL RIGHTS RESTORED, UNLESS THE PARDON, EXPUNCTION, OR RESTORATION OF CIVIL RIGHTS PROVIDES THAT THE PERSON MAY NOT SHIP, TRANSPORT, POSSESS OR RECEIVE FIREARMS.

7. COMMANDERS MUST ESTABLISH PROCEDURES TO ENSURE COMPLIANCE WITH THE LAW TO INCLUDE WITHDRAWING PRIVATELY OWNED WEAPONS FROM ARMS ROOMS. THESE PROCEDURES SHOULD PERMIT, HOWEVER, FOR SUCH SOLDIERS TO SELL OR TRANSFER THEIR PERSONAL FIREARMS TO AUTHORIZED INDIVIDUALS. COMMANDERS SHOULD ADVISE SOLDIERS WISHING TO SELL OR TRANSFER FIREARMS STORED IN ARMS ROOMS TO SEEK ASSISTANCE FROM A LEGAL ASSISTANCE ATTORNEY AT THE LOCAL OFFICE OF THE STAFF JUDGE ADVOCATE. LEGAL ASSISTANCE ATTORNEY CAN ASSIST SOLDIERS IN PREPARING BILLS OF SALE AND POWERS OF ATTORNEY.

8. NO ACTION OTHER THAN WHAT IS SPECIFIED IN THIS MESSAGE IS REQUIRED TO BE TAKEN PENDING ISSUANCE OF FURTHER HQDA GUIDANCE.

9. POINT OF CONTACT FOR HQDA IS MAJ DILLARD AT DSN 227-2403 (EMAIL DILLANL@HQDA.ARMY.MIL) OR COL BRADY AT DSN 227-7054 (EMAIL BRADYTM@HQDA.ARMY.MIL).



PERSONNEL AND
READINESS

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000



NOV 27

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DEFENSE FIELD ACTIVITIES

SUBJECT: Department of Defense (DoD) Policy for Implementation of Domestic Violence
Misdemeanor Amendment to the Gun Control Act for Military Personnel

This directive-type memorandum establishes DoD policy for implementing the domestic violence amendment to the Gun Control Act of 1968 (18 U.S.C. §§ 922(d)(9) and (g)(9)) for military personnel. It supersedes the memorandum of October 22, 1997, on this subject that provided interim DoD policy. DoD Components shall take all reasonable and necessary steps to implement this policy with regard to military personnel. For the purposes of this policy, the DoD Components include the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the DoD Field Activities, and all other organizational entities of the Department of Defense.

The domestic violence amendment makes it a felony for any person to sell or otherwise dispose of firearms or ammunition to any person whom he or she knows or has reasonable cause to believe has been convicted of a "misdemeanor crime of domestic violence" (18 U.S.C. § 922(d)(9)). The amendment also prohibits anyone who has been convicted of a misdemeanor crime of domestic violence from shipping or transporting in interstate or foreign commerce, or possessing in or affecting commerce, any firearm or ammunition; or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce (18 U.S.C. § 922(g)(9)). (See attachment for definition of terms used in this memorandum.)

The law applies to misdemeanor crimes of domestic violence only. For purposes of this memorandum, however, a "qualifying conviction" also includes a conviction for a "crime of



domestic violence" tried by general or special court-martial which otherwise meets the definition of a misdemeanor crime of domestic violence. Further, as a matter of DoD policy, a conviction for an offense meeting the definition of a "felony crime of domestic violence" adjudged on or after the date of this memorandum shall be considered a qualifying conviction for purposes of this memorandum. The term "qualifying conviction" does not include summary court-martial convictions, imposition of nonjudicial punishment (Article 15, UCMJ), or deferred prosecutions or similar alternative dispositions in civilian courts.

Each Military Department shall implement a program to periodically inform its military personnel of the domestic violence amendment to the Gun Control Act, its consequences, and this policy. Information provided shall include notice that personnel have an affirmative, continuing obligation to inform commanders or supervisors if they have, or later obtain, a qualifying conviction and that the revised DD Form 2760 (attached), which states that any statements made on the form will not be used in a prosecution for violating the Gun Control Act, is available. All DoD components shall post notices about the domestic violence amendment and DoD implementing policy in all facilities in which Government firearms or ammunition are stored, issued, disposed of, and transported.

If in implementing this policy a Military Department chooses to require that all or some of its military personnel certify whether or not they have a qualifying conviction, the DD Form 2760 shall be used for such certifications. Even if certification is not required, DD Form 2760 shall be made available for those personnel who come forward to report a qualifying conviction in compliance with their obligation to do so. The use of this form and the protections it affords have been approved in accordance with Section E of the 1984 Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes (see DoD Directive 5525.7). Each Military Department shall issue regulations governing how completed forms are to be filed and maintained to ensure they are retrievable if needed.

The Military Departments' procedures to discover whether an applicant for military service has a qualifying conviction for a crime of domestic violence shall continue in effect. Individuals with such convictions shall not be granted a waiver for entrance into military service.

In the case of all members found to have a qualifying conviction, appropriate authority will immediately retrieve all Government-issued firearms and ammunition, suspend the member's authority to possess government issued firearms or ammunition, and advise them to dispose of their privately owned firearms and ammunitions lawfully. These actions shall also be taken if there is reasonable cause to believe a military member has a qualifying conviction.

Consistent with applicable law and regulations, the Military Departments may promulgate regulations governing permanent adverse personnel actions, including discharge, that may be taken with respect to service members who have a qualifying conviction. Separation of military personnel shall comply with existing statutory military retirement sanctuaries (See 10 U.S.C. § 1176(a)(regular and reserve members); 10 U.S.C. § 637(a)(5)(regular officers); 10 U.S.C. § 580(a)(4)(C)(regular warrant officers); 10 U.S.C. § 12646(e)(1)(reserve commissioned officers); 10 U.S.C. § 12686 (reserves on active duty). A service member in any of these

sanctuaries who has a "qualifying conviction" and would otherwise be separated under Military Department regulations shall be given meaningful duties that do not entail access to firearms or ammunition until they are retired upon first attaining eligibility.

DoD Components may afford military personnel who have qualifying convictions a reasonable time to obtain an expungement or pardon of the qualifying conviction. If time is granted to a service member for this purpose, however, DoD Components shall retrieve all Government-owned or issued firearms and ammunition and suspend the service member's authority to possess firearms and ammunition until an expungement or pardon is obtained.

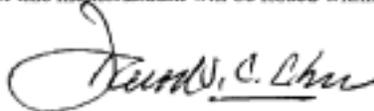
Military Departments shall issue policies and procedures to ensure compliance with the domestic violence amendment to the Gun Control Act with respect to privately owned firearms under Government control or permitted in Government quarters. Policies and procedures shall also be issued governing the transfer of firearms and ammunition to individuals in morale, welfare, and recreation activities and other Government-sponsored or sanctioned activities.

If a completed security clearance investigation reveals that a military member has a qualifying conviction, the investigation shall be referred to the requesting DoD component for action consistent with this policy.

The actions required by this memorandum apply outside United States territory as a matter of policy. The Department has not construed the amendment to apply to major military weapon systems or "crew served" military weapons and ammunition (tanks, missiles, aircraft, etc.).

The Military Departments are requested to forward copies of their implementing instructions or regulations not later than 120 days from the date of this memorandum.

This memorandum is effective immediately. A DoD Directive or Instruction incorporating the substance of this memorandum will be issued within 120 days.



David S. C. Chu

Attachments:
As stated